

**OCT 21 2005**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HUMBERTO LOZANO VALDOBINOS,

Defendant - Appellant.

No. 04-30411

D.C. No. CR-04-00155-03-JCC

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Western District of Washington  
John C. Coughenour, Chief Judge, Presiding

Submitted October 11, 2005<sup>\*\*</sup>

Before: T.G. NELSON, WARDLAW, and TALLMAN, Circuit Judges.

Humberto Lozano Valdobinos appeals the 97-month sentence imposed after his guilty plea conviction for distribution of heroin in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). We have jurisdiction under 28 U.S.C. § 1291, and

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

we remand.

Because Lozano Valdobinos was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional *Booker* error).

**REMANDED.**